

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

TUESDAY, THE 23rd

JUSTICE HAINEY)

DAY OF FEBRUARY, 2021



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

WELLINGTON SETTLEMENT APPROVAL ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**"), in its capacity as Court-appointed trustee (in such capacity, the "**Trustee**"), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) approving and ratifying the Settlement Agreement dated as of January 13,

2021 (the “**Wellington Settlement Agreement**”) among Wellington House Inc. (the “**Borrower**”), the Trustee, Olympia Trust Company (“**OTC**”), Computershare Trust Company of Canada (“**Computershare**”), BJL Properties Inc. (“**BJL**”), and Brad J. Lamb (“**Lamb**”, and together with BJL, the “**Guarantors**”); (ii) ordering the Borrower to pay the Settlement Payments and the Late Payment Fees (as each such term is defined in the Wellington Settlement Agreement), as applicable, to the Trustee pursuant to the Wellington Settlement Agreement; (iii) ordering the Borrower, the Trustee, OTC, Computershare, BJL, and Lamb to comply with the Wellington Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery to the Borrower of a copy of the Trustee’s Certificate (as defined below), make a distribution of Wellington Realized Property to Wellington Individual Lenders (each as defined below), was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-Fifth Report of the Trustee dated February 16, 2021 (the “**Twenty-Fifth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the Borrower and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Chloe Nanfara sworn February 17, 2021, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Fifth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Twenty-Fifth Report or the Wellington Settlement Agreement, as applicable.

APPROVAL OF THE WELLINGTON SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Wellington Settlement Agreement be and is hereby approved in its entirety, including without limitation, the Late Payment Fees as contemplated by

Section 6 thereof, if any, with such minor amendments as the Trustee and the other parties to the Wellington Settlement Agreement may agree upon to permit the completion of the transactions contemplated thereby; (ii) the Borrower is hereby directed to pay the First Settlement Payment in the amount of \$4,000,000 forthwith to the Trustee, on behalf of BDMC, in accordance with the terms of the Wellington Settlement Agreement; (iii) the Borrower is hereby directed to pay the Second Settlement Payment in the amount of \$2,316,800 to the Trustee, on behalf of BDMC, on or before the Second Settlement Payment Due Date, in accordance with the terms of the Wellington Settlement Agreement (such funds received under paragraphs 3(ii) and 3(iii) together, the **“Wellington Realized Property”**); (iv) the Borrower and the Guarantors are hereby directed to deliver the Security (as defined in the Wellington Settlement Agreement), as applicable; and (v) the execution of the Wellington Settlement Agreement by the Trustee, OTC, and Computershare is hereby ratified and approved, and the Trustee, OTC, and Computershare are hereby authorized and directed to comply with all of their obligations under the Wellington Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee’s certificate to the Borrower substantially in the form attached as Schedule “A” hereto (the **“Trustee’s Certificate”**), all of the Borrower’s obligations to Building & Development Mortgages Canada Inc. (**“BDMC”**), OTC, Computershare and the individual lenders (the **“Wellington Individual Lenders”**) under the Loan Agreement dated April 15, 2016 between BDMC and the Borrower (as amended and/or supplemented, the **“Loan Agreement”**), the Security and the Loan Documents (as each such term is defined in the Loan Agreement) (collectively, the **“Wellington Loan Obligations”**) and all security interests granted to BDMC, OTC, Computershare or the Wellington Individual Lenders in and to the assets of the Borrower to secure the Wellington Loan Obligations and related registrations on title, including the Charge (as defined in the Wellington Settlement Agreement) (the **“Loan Encumbrances”**, which for greater certainty shall not include the Security (as defined in the Wellington Settlement Agreement)) are hereby released, waived, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC, Computershare or any Wellington Individual Lender shall have any claim against the Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances; provided that, notwithstanding the foregoing, (i) the releases, discharges, and other matters contained or described in this paragraph shall not in any way affect the obligations of the Borrower, BJL, or

Lamb under, or any rights acquired by the Trustee in connection with, the Wellington Settlement Agreement, including the Borrower's obligation to make the Second Settlement Payment and, if applicable, the Second Late Payment Fee and to deliver the Security (as defined in the Wellington Settlement Agreement) to the Trustee in accordance with the terms thereof, and (ii) nothing in this paragraph shall affect the Turnover Obligation (as defined in the Wellington Settlement Agreement).

5. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate as soon as practicable after delivery thereof to the Borrower.

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate to the Borrower, the Wellington Realized Property is and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that all of the Wellington Individual Lenders' rights and claims under the Loan Agreement and related security, which for greater certainty shall not include the Security (as defined in the Wellington Settlement Agreement), shall attach to the Wellington Realized Property and shall have the same nature and priority as they had prior to the consummation of the Wellington Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for Toronto (#66) of an Application to Register an Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Loan Encumbrances listed in Schedule "C" hereto.

8. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate to the Borrower, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, Computershare, and each Wellington Individual Lender who loaned funds through BDMC to the Borrower pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents,

employees, and each of their respective successors and assigns (collectively, the “**Releasees**”) by the Borrower on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the “**Releasers**”) shall be binding and effective on the Releasers in favour of the Releasees.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that, as of the date of this Order, the full amount of the Deposit (as defined in the Wellington Settlement Agreement) constitutes Realized Property as defined in the Interim Stabilization Order and shall be retained by the Trustee, on behalf of BDMC, in accordance with the terms of the Wellington Settlement Agreement.

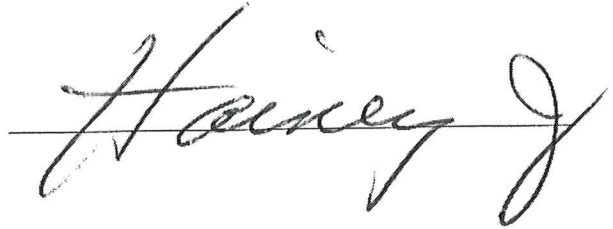
10. **THIS COURT ORDERS** that, with respect to the First Settlement Payment, upon the delivery of the Trustee’s Certificate, and with respect to the Second Settlement Payment, upon receipt by the Trustee of such funds, the Trustee shall make a distribution to Wellington Individual Lenders in an amount equal to 85% of the Wellington Realized Property, *pro rata* to the Wellington Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

AID AND RECOGNITION OF FOREIGN COURTS

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that

the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A handwritten signature in black ink, appearing to read "Hainey J", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 23 2021

PER / PAR:

Handwritten initials "pl" in blue ink.

Schedule "A" – Form of Trustee's Certificate

Court File No.: CV-18-596204-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

TRUSTEE'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (the "**Trustee**") of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. ("**BDMC**").

B. Pursuant to an Order of the Court made on February 23, 2021 (the "**Wellington Settlement Approval Order**"), the Court approved and ratified the Settlement Agreement dated as of January 13, 2021 (the "**Wellington Settlement Agreement**") among Wellington House Inc. (the "**Borrower**"), the Trustee, Olympia Trust Company ("**OTC**"), Computershare Trust Company of Canada ("**Computershare**"), B.J.L. Properties Inc. ("**BJL**"), and Brad J. Lamb ("**Lamb**" and

together with BJJ, the “**Guarantors**”) and ordered that all of the Borrower’s obligations to BDMC, OTC, Computershare, and the individual lenders (“**Wellington Individual Lenders**”) under the Loan Agreement dated as of April 15, 2016 (as amended and/or supplemented, the “**Loan Agreement**”), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Wellington Loan Obligations**”) and all security interests granted to BDMC, OTC, Computershare or the Wellington Individual Lenders in and to the assets of the Borrower to secure the Wellington Loan Obligations (the “**Loan Encumbrances**”, which for greater certainty shall not include the Security (as defined in the Wellington Settlement Agreement)) are hereby released, waived, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC, Computershare or any Wellington Individual Lender shall have any claim against the Borrower in respect of the Wellington Loan Obligations or the Loan Encumbrances (provided that, (i) such releases shall not in any way affect the obligations of the Borrower, BJJ, or Lamb under, or any rights acquired by the Trustee in connection with, the Wellington Settlement Agreement, including the Borrower’s obligation to make the Second Settlement Payment and the Second Late Payment Fee (as each such term is defined in the Wellington Settlement Agreement), if applicable, and to deliver the Security (as defined in the Wellington Settlement Agreement) to the Trustee, and (ii) nothing shall affect the Turnover Obligation (as defined in the Wellington Settlement Agreement)), and that the release of the Wellington Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to the Borrower of a certificate confirming (i) the payment of the First Settlement Payment (as defined in the Wellington Settlement Agreement) to the Trustee (on behalf of BDMC) by the Borrower in accordance with the terms of the Wellington Settlement Agreement; and (ii) that the conditions precedent to the Wellington Settlement Agreement as set out in Section 16 of the Wellington Settlement Agreement have been satisfied or waived by the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Wellington Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. The Security (as defined in the Wellington Settlement Agreement) has been executed by the Borrower and the Guarantors, as applicable, and delivered to the Trustee (on behalf of

BDMC), and duly registered in all applicable offices on terms and conditions satisfactory to the Trustee in its sole discretion;

2. The Trustee, Borrower and each Guarantor have entered into or delivered such additional documents, instruments, assignments, and assurances as the Trustee reasonably required in connection with the Security (as defined in the Wellington Settlement Agreement) to effect the transactions contemplated thereby and by the Wellington Settlement Agreement in accordance with their true intent;
3. The Wellington Settlement Approval Order has been granted by the Court and no material objections (in the sole opinion of the Trustee) were raised by the individual lenders or by any other party at the motion for approval of the Wellington Settlement Approval Order, or, if any material objection was raised, the appeal periods in respect of the Wellington Settlement Approval Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of with no further right of appeal or leave to appeal;
4. The Borrower has paid, and the Trustee has received, the First Settlement Payment and, if applicable, the First Late Payment Fee (each as defined in the Wellington Settlement Agreement) pursuant to the Wellington Settlement Agreement;
5. The Borrower has provided the Release Agreement to the Releasees;
6. The Borrower and the Guarantors have certified that all of their representations and warranties contained in the Wellington Settlement Agreement continue to be true as of the Closing Date; and
7. The Borrower continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Wellington Settlement Agreement.

This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**FAAN Mortgage Administrators Inc., solely
in its capacity as Court-appointed Trustee of
the assets, undertakings, and properties of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN 21240-0271

PT LT 18 SEC F PL MILITARY RESERVE TORONTO DESIGNATED AS PTS 1 & 2
66R29746; SUBJECT TO AN EASEMENT OVER PT 2 ON PLN 66R-29746 IN FAVOUR OF
PT LTS 17 AND 18 SECTION F, MILITARY RESERVE PLAN DESIGNATED AS PTS 2 AND
4 PLN 64R13628 AS IN WF61931; TOGETHER WITH AN EASEMENT OVER PT 3 ON PLN
66R-29746 AS IN WF61931; CITY OF TORONTO

Schedule "C" – Loan Encumbrances

1. Instrument No. AT4333932 registered September 6, 2016 being a Charge in favour of Building & Development Mortgages Canada Inc. ("BDMC") to secure the original principal amount of \$7,695,000 (the "BDMC Charge").
2. Instrument No. AT4333936 registered September 6, 2016 being a Transfer of the BDMC Charge to BDMC and Olympia Trust Company ("OTC").
3. Instrument No. AT4345972 registered September 19, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
4. Instrument No. AT4363748 registered October 5, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
5. Instrument No. AT4394230 registered November 7, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
6. Instrument No. AT4428537 registered December 8, 2016 being a Transfer of the BDMC Charge to BDMC and OTC.
7. Instrument No. AT4447242 registered January 3, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
8. Instrument No. AT4485647 registered February 13, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
9. Instrument No. AT4508364 registered March 10, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
10. Instrument No. AT4523786 registered March 30, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
11. Instrument No. AT4553267 registered May 2, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
12. Instrument No. AT4593680 registered June 9, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
13. Instrument No. AT4623213 registered July 11, 2017 being a Transfer of the BDMC Charge to BDMC and OTC.
14. Instrument No. AT4784386 registered January 19, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and Computershare Trust Company of Canada ("CTCC").
15. Instrument No. AT4794700 registered February 1, 2018 being a Transfer of the BDMC Charge to BDMC, OTC and CTCC.

16. Instrument No. AT4794699 registered February 1, 2018 being a Notice of Agreement amending the BDMC Charge to reduce the principal amount secured to \$7,415,000.
17. Instrument No. AT4847106 registered April 23, 2018 being a postponement of the BDMC Charge to Instrument No. AT4847029 registered April 23, 2018 being a Charge in favour of Cameron Stephens Financial Corporation.

Schedule "D" – Release Agreement

[DATE]

TO: FAAN Mortgage Administrators Inc., as Court-appointed Trustee of Building & Development Mortgages Canada Inc. (in such capacity, the "Trustee")

AND TO: Olympia Trust Company ("OTC")

AND TO: Computershare Trust Company of Canada ("Computershare")

Re: Release granted in connection with repayment and settlement of the Obligations pursuant to Wellington Settlement Agreement

Dear Sirs/Mesdames,

Reference is made to the Loan Agreement dated as of April 15, 2016 (as amended and/or supplemented, the "Loan Agreement") between Wellington House Inc. (the "Borrower") and Building & Development Mortgages Canada Inc., in trust ("BDMC"), and the related Security and Loan Documents (each as defined in the Loan Agreement). All capitalized terms used in this agreement (the "Release Agreement") shall, unless otherwise defined herein, have the same meanings given to them in the Loan Agreement or the Settlement Agreement dated as of January 13, 2021 among the Borrower, the Trustee, OTC, Computershare, BJI Properties Inc. ("BJI"), and Brad J. Lamb ("Lamb") (the "Wellington Settlement Agreement").

1. The Borrower hereby certifies that all of its representations and warranties contained in the Wellington Settlement Agreement are true and accurate in all material respects as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Wellington Settlement Agreement.
2. The Borrower has paid the Trustee (on behalf of BDMC) the First Settlement Payment and, if applicable, the First Late Payment Fee pursuant to the Wellington Settlement Agreement, and the Borrower waives, and shall not assert, any right of set-off or any other defence to the payment of such amounts.
3. In consideration of the acceptance of the First Settlement Payment and, if applicable the First Late Payment Fee, in full and final satisfaction of the Obligations (which, for greater certainty, does not include or affect the obligation to make the Second Settlement Payment and, if applicable, the Second Late Payment Fee (as each such term is defined in the Wellington Settlement Agreement), to deliver the Security (as defined in the Wellington Settlement Agreement) to the Trustee, or any of the rights acquired by the Trustee in connection the Wellington Settlement Agreement) payable to BDMC by the Borrower under the Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the "Releasers") hereby releases, discharges and acquits the Trustee, BDMC, OTC, Computershare and each lender or investor who loaned funds through BDMC to the Borrower pursuant to the Loan

Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "Releasees") from any and all claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releasor, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the Loan Agreement, the Loan Documents, the proceedings initiated by the Order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018, or any transactions hereunder or thereunder.

This Release Agreement shall be effective immediately upon the delivery of the Trustee's Certificate and may be relied upon by any of the Releasees, whether or not such Releasee is a party to this Release Agreement or the Wellington Settlement Agreement.

This Release Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, and may be executed and delivered by facsimile or .pdf file transmitted by email, and all such counterparts, .pdf files and facsimiles when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same Release Agreement.

This Release Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

Yours truly,

WELLINGTON HOUSE INC.

By:

Name:

Title:

Accepted and agreed to by:

**FAAN MORTGAGE
ADMINISTRATORS INC.**, solely in its
capacity as Court-appointed Trustee of
Building & Development Mortgages Canada
Inc. and in no other capacity

By:

Name:

Title:

OLYMPIA TRUST COMPANY

By:

Name:

Title:

**COMPUTERSHARE TRUST
COMPANY OF CANADA**

By:

Name:

Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA
INC.**

Applicant

Respondent

Court File No. CV-18-596204-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**WELLINGTON SETTLEMENT APPROVAL
ORDER**

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSO# 48038U)
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.